

# Contract Drafting

## Techniques Used By Transactional Lawyers

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### Carol Mattick



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Carol Mattick graduated with JD and MBA degrees simultaneously from University of Texas at Austin. After a four-year stint with a large law firm in San Antonio, Texas, she began a solo law practice dedicated solely to providing corporate and securities law advice to growing companies. Since 1998, she has maintained offices in two cities, Austin and San Antonio, and draws clients from both metro areas as well as around the state of Texas and beyond.

Her transactions for clients have included working with companies seeking private equity capital; representation of "angel" investors; formation and ongoing representation of private funds and their registered or exempt investment advisers; representation of senior executives with respect to employment and incentive compensation packages; representation of private companies up to \$50 million in annual revenues on the "sell side" or being acquired; and all kinds of contract drafting and review.

Her skill sets also include representation of persons and companies in investigations by state and federal securities regulators; seeking no-action letter rulings from the SEC; consulting expert witness engagements; formation and tax-exempt status of non-profit entities, particularly economic development entities; and other kinds of business transactions and contracts. Carol has been in solo practice doing this kind of work for thirty years.

Ms. Mattick has taught the subjects in which she practices law to MBA level graduate students at UT Austin in the Masters in Science and Technology Commercialization offered by that institution's IC2 Institute. IC2 was founded by George Kozmetsky after his stint as dean of the UT Austin business school and IC2 was the original parent organization for the Austin Technology Incubator, the Austin Technology Council and the Capital Network, an early angel group. In San Antonio, she was a founding board member of the San Antonio Technology Accelerator Initiative, from its founding in 1999 to 2005.

She was a member of the planning committee of UT Law CLE's Conference on Securities Regulation and Business Law Problems for many years and co-chaired it in 2010, 2011, 2015, and 2016; She was a creator and co-chair of the planning committee of UT Law's Private Companies Institute. Carol has been featured as a speaker in her areas of practice expertise multiple times at the Texas Bar CLE courses in Advanced Business Law and the Essentials of Business Law. She has spoken at meetings of the ABA Section on Taxation, Closely Held Businesses committee and the ABA Section on Business Law, State Securities Regulation committee.

Ms. Mattick has been a member of the Securities Law committee of the Business Law Section of the State Bar of Texas for twenty-five years and chaired that committee from 2005 - 2014. She has been a member of the Business Law Section's governing council twice. She now chairs the Section's Website Committee, planning and sending content out to the Section's members via that platform.

Carol lives in San Antonio with her husband, Steve, and large hound "Bruno". She works in the community with a number of organizations, including the Girl Scouts.

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# The More You Know

- Understand the Economics of the Transaction or Relationship
- Understand the Relative Bargaining Power of and Relationship Between the Parties
- Understand the “Workflow” of the Parties’ Business Relationship
- A Quick Tally of Events, Communications and Actions of the Parties to Date in Relation to Each Other.
- Don’t let the tail wag the dog. In other words, start with open ears and a blank piece of paper, not a form of agreement that may or may not fit that transaction.

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# Context Matters: Make Conscious Drafting/Reviewing Decisions

- Step One is to do your homework and investigate:
  - Ask questions
  - Listen to the answers
  - Follow-up
- What is actually needed in a transaction is oftentimes different than what the client thinks is needed.
- Does Your Client Want a Pre-Contractual Relationship or a Definitive Contractual Relationship?
- Is Your Client Entering Into a Contract or a Partnership?
- Does It Benefit Your Client to Enter Into An Enforceable Contract or Provision? Or Not?
- Know what matters to your client and be focused and selective in what you negotiate.

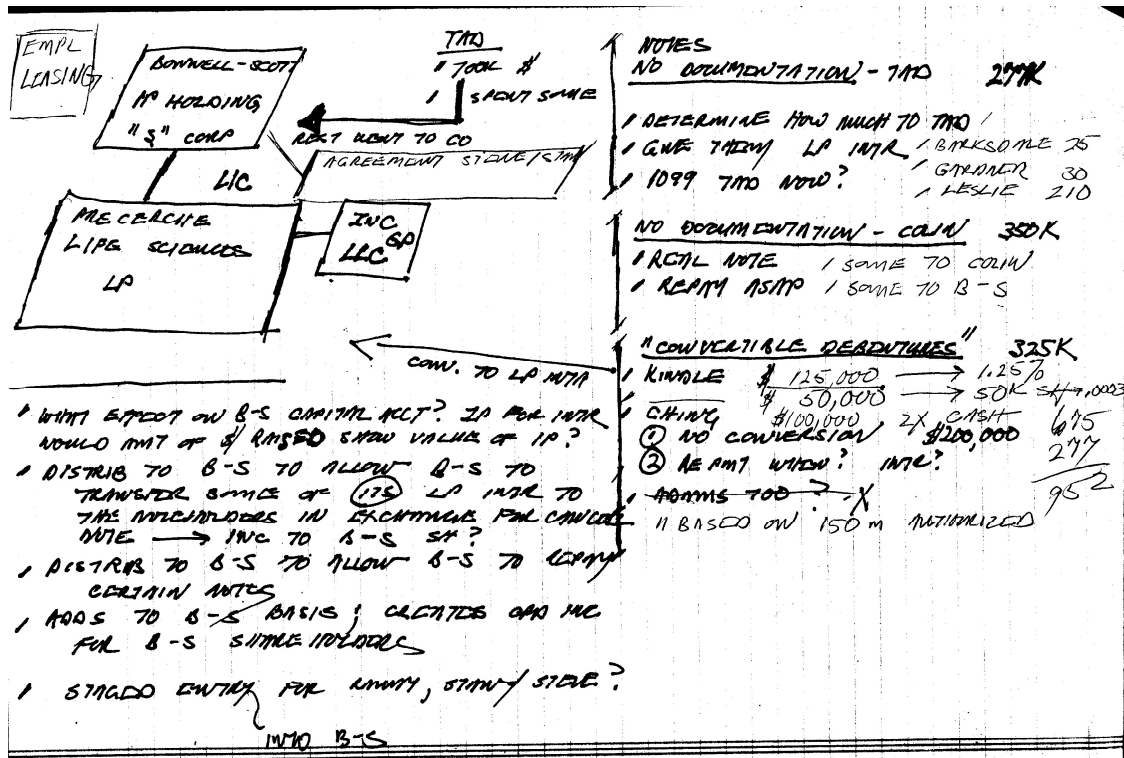
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# Determine Potential Universe of Transaction Documents

E.G.....

- Employment Transaction: An employment agreement, long term incentive plan, equity award agreement and Section 83(b) Election
- M&A Transaction: An asset purchase agreement or merger agreement, bills of sale or other conveyance documents, waivers or consents of lenders, new loan docs, employment agreements for combined entity, amended or new governing documents for combined entity, equity holder agreement for new entity, filing docs with parties' jurisdiction of formation.
- Joint Venture Transaction: A joint venture agreement, an LLC Agreement and other governing documents for the joint venture entity, employment agreements, supply agreements, purchase agreements, management agreements, loan documents, lender and other third party consents or authorizations, and any other industry specific documents relating to the operations of the joint venture.

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## Title search: Approaches to Contract Drafting

Also available as part of the eCourse

[Contract Drafting Essentials: A Practical Guide to Fundamental Concepts, Approaches, and Key Considerations](#)

First appeared as part of the conference materials for the  
2020 Contract Drafting Essentials: A Practical Guide to Fundamental Concepts, Approaches,  
and Key Considerations session  
"Approaches to Contract Drafting "